

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF TEXAS

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4 THE HONORABLE ANDREW S. HANEN, JUDGE PRESIDING

5 UNITED STATES OF AMERICA, No. 4:15-cr-0566

6 Plaintiff,

7 vs.

8 LEE ROY VILLARREAL,

9 Defendant.

10 PRETRIAL CONFERENCE

11 OFFICIAL REPORTER'S TRANSCRIPT OF PROCEEDINGS

12 Houston, Texas

13 June 14, 2021

14 APPEARANCES:

15 For the Plaintiff: Casey MacDonald, Esq.
16 Anibal Alaniz, Esq.

17 For the Defendant: Edwin Gerald Morris, Esq.
18 Angelica Patrice Cogliano, Esq.
Addy Maldonado Miro, Esq.

19 Reported by: Nichole Forrest, RDR, CRR, CRC
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22 Southern District of Texas
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23 Proceedings recorded by mechanical stenography.
24 Transcript produced by Reporter on computer.
25

PROCEEDINGS

(The following proceedings held in open court.)

* * *

THE COURT: All right. Be seated.

We're here in 15-cr-566, United States
versus Lee Roy Villarreal.

You want to make an announcement for
the government?

MR. ALANIZ: Yes, Your Honor. I'm
Anibal Alaniz, and Casey MacDonald, for the
government.

MR. MORRIS: Gerry Morris for
Mr. Villarreal, along with Angelica Cogliano and
Addy Miro.

THE COURT: I want to start with
exhibits.

MR. MORRIS: Your Honor, we handed --
may we have those back, just a minute, and write the
exhibit number on them? That's a working copy.

THE COURT: Yes.

While Mr. Morris and Ms. Cogliano are
doing that, can we talk about the government's
exhibit list?

MR. MORRIS: The only two objections

1 we have is to Exhibits 39 and 40. Those have to do
2 with --

3 THE COURT: Hold on just a second
4 then.

5 I'm admitting 1 through 38, and I'm
6 admitting 41 through 53. And 53 is my last exhibit,
7 at least on my copy.

8 MR. MORRIS: That's correct.

9 THE COURT: Then let's go to 39 and
10 40.

11 MR. MORRIS: What these two exhibits
12 deal with is a recording that was made by a
13 cooperating individual that was wired up and had
14 conversations --

15 MS. MACDONALD: I think counsel is
16 referring to Exhibits 38 and 39.

17 THE COURT: All right. 38 and 39, I
18 have, are two disks of some sort.

19 MR. MORRIS: You're right. I
20 apologize. It's 38 and 39.

21 THE COURT: All right. So 40 is
22 admitted. But 38 is not admitted --

23 MR. MORRIS: That's correct.

24 THE COURT: -- at least from my prior
25 statement.

1 Okay. Let's talk about 38 and 39
2 then.

3 MR. MORRIS: What these relate to is a
4 recorded conversation that was recorded by a
5 cooperating individual who was wired, and there were
6 several people who were having a conversation.

7 The original transcript of that
8 conversation was provided to previous counsel, looks
9 like back in 2016. There were objections at the
10 time to the accuracy of it. March of this year, we
11 received another transcript which identified more
12 than 50 areas where the new transcript says now
13 we've got the speaker wrong on the first one.

14 We have examined the -- compared the
15 transcript to the tape. We have hired an expert.
16 Also, Ms. Miro is a native Spanish speaker, so she
17 reviewed it. And we don't -- we agree that the
18 words are correctly translated. What we don't agree
19 is that those words were properly attributed to the
20 correct speaker.

21 THE COURT: All right. Who wants to
22 address that for the government?

23 MS. MACDONALD: I will, Your Honor.
24 We will authenticate the speakers through the
25 witness who made the recording, who knows all the

1 people on the recording.

2 THE COURT: Okay. So I am not going
3 to admit it, at least right now, until you can
4 authenticate who is saying what.

5 MS. MACDONALD: Okay.

6 THE COURT: Okay. That will be, just
7 for the record again, Exhibits 38 and 39. And the
8 remainder of the government's exhibits are admitted.
9 And by that, I mean, you know, it's a picture. You
10 don't have to prove it up anymore. You can just --
11 it's in.

12 MR. MORRIS: I apologize for the
13 exhibits being black and white. We just brought a
14 black-and-white printer with us. We'll reprint when
15 we do color.

16 THE COURT: Okay. Ms. MacDonald,
17 either you or Alaniz, have you seen these; and if
18 so, do you have any objections?

19 MS. MACDONALD: Yes, we have; and yes,
20 we do have objections, Your Honor.

21 I understand, from speaking with
22 defense counsel prior to pretrial, that some
23 exhibits are being withdrawn. Exhibit 1, 4, and 5.

24 THE COURT: Is that right?

25 MR. MORRIS: That's correct.

1 THE COURT: So 1, 4, and 5 are
2 withdrawn.

3 Okay. With that understanding, what
4 is your first objection, Ms. MacDonald? Which
5 exhibit?

6 MS. MACDONALD: We're objecting to
7 Exhibits 2, 3, 6, 7, and 8. These are photos of the
8 defendant with family members and/or just photos of
9 family members. Our objection is based on
10 relevancy.

11 THE COURT: Hold on just a second.
12 I'm looking at Exhibit 2. Do we know who Exhibit 2
13 is?

14 MS. MACDONALD: A photo of the
15 defendant's father is my understanding.

16 THE COURT: What is the relevance of
17 this, Mr. Morris?

18 MR. MORRIS: Your Honor, the relevance
19 is --

20 THE COURT REPORTER: I'm sorry,
21 counsel --

22 THE COURT: It's hard to break a
23 habit, I know.

24 MR. MORRIS: I apologize again.
25 There is going to be a lot of evidence

1 about Mr. Lee Roy Villarreal's relationship with
2 Gringo Mike, his brother. From the weight of that
3 evidence and from the volume of it, it makes it
4 sound like that's the only family he's got.

5 And we are putting on pictures of his
6 family; one, to show that he does have a family in
7 the area in Mission, Texas. That's the reason he's
8 there. It's not that he's there to deal dope. And
9 that also he has an extended family.

10 Also we're going to tell the story of
11 Mr. Villarreal; what he does, why he lives where he
12 does, why he's in the business that he's in. And
13 his father has relevance to that. We want to show
14 his father. 403 language, I don't see any
15 particular detriment to the government showing what
16 Mr. Villarreal's father looks like.

17 With respect to some of the other
18 photographs, some of the witnesses have described
19 Mr. Villarreal in different terms. Some say he's
20 short, some say heavysset, some say he's dark
21 complected. These photographs of Mr. Villarreal and
22 his family show what he looked like at various times
23 during the events.

24 THE COURT: On No. 2, I'll defer.
25 What was the next one you had an objection to?

1 MS. MACDONALD: Exhibit 6, Your Honor.

2 THE COURT: Pardon me?

3 MS. MACDONALD: Exhibit 6.

4 THE COURT: These aren't numbered. I
5 don't have a 3, 4, 5.

6 MS. MACDONALD: 4 and 5 have been
7 withdrawn.

8 THE COURT: Do we have a 3?

9 MS. MACDONALD: 3, yes, is a house.
10 We have no objection to that.

11 THE COURT: Is that 3?

12 MS. COGLIANO: (Puts her thumbs up.)

13 THE COURT: 3 is admitted. 4 and 5
14 have been withdrawn.

15 All right. 6. What is the objection
16 to 6?

17 MS. MACDONALD: Again, relevancy. 6
18 are two pictures. The first one is the defendant
19 with, I assume it's his son, a young boy. Then
20 there's another picture with some other family
21 members, it appears.

22 THE COURT: I'm sorry. I didn't hear
23 that.

24 MS. MACDONALD: The second picture, it
25 shows the defendant with other unknown individuals.

1 We understand the relevancy of showing
2 photos of the defendant throughout the years. Our
3 objection is that defense has chosen photos which
4 include his children, which seem to pander to the
5 jury and go to invoking sympathy.

6 We have a victim in this case who is
7 dead. We're admitting a picture of the victim.
8 We're not admitting any pictures of the victim's
9 family or his parents. That all plays to the
10 sympathy. Under 403, it should be omitted is our
11 position.

12 THE COURT: I'm going to defer 6, 7,
13 8. What about 9?

14 MS. MACDONALD: No objection.

15 THE COURT: 9 is admitted.

16 10, a picture of the room.

17 Gladiators.

18 MS. MACDONALD: Objection as to
19 relevancy. It's our understanding that counsel
20 seeks to admit an entire yearbook from 2012. We
21 don't understand the relevancy of that.

22 MS. COGLIANO: Judge, I just got the
23 yearbook as my client got to Houston. So what I
24 want to do is take pictures of all the active
25 students in Roma High School that year. There are

1 several witnesses that say they went to high school
2 with our client; that they know people from that
3 high school. There is a mom by that same last name,
4 a teaching assistant at that high school. And none
5 of those people appear in the yearbook.

6 THE COURT: Well, I'm going to defer
7 on 10. But, obviously, if somebody is on the stand,
8 you can ask them: Where did you go to high school?
9 Roma. Were you there in 2012? How come your
10 picture is not in annual? Or ask them to -- hand
11 them the annual and say, Find your picture.

12 Okay. Now, I go from 10. I don't
13 have 11, 12, or 13.

14 MS. MACDONALD: Those are video clips
15 of businesses owned by the defendant. We have no
16 objection so long as defense counsel agrees to
17 stipulate that those were taken in 2021.

18 MS. COGLIANO: We do.

19 THE COURT: They're admitted then.

20 14, it looks like we have some people
21 hanging off a bridge.

22 MS. MACDONALD: We have an objection
23 to that as to relevancy. The first portion of the
24 exhibit is a bunch of text in Spanish. It's hard
25 for us to read. We also can't give the Court our

1 position until we know what the English translation
2 is. Not sure of the relevancy of that document at
3 this point.

4 THE COURT: I'm going to sustain it
5 for right now. If it becomes relevant later on, you
6 can reoffer it. That was 14.

7 I assume, the same objection to 15?

8 MS. MACDONALD: Yes.

9 THE COURT: I'll sustain that as well.
10 It's a bunch of language in Spanish.

11 So 14 and 15, I'm sustaining, but with
12 the understanding that if there is some relevance
13 that later comes up.

14 All right. 16, looks like somebody
15 who has been killed with a sign.

16 MS. MACDONALD: Same objection. There
17 is some text in Spanish over the body. Not sure
18 what the relevance of this is.

19 THE COURT: Okay. What is the
20 relevance to this?

21 MS. COGLIANO: There is going to be
22 testimony from some of our witnesses that our client
23 was told not to come back to Mexico because it was
24 too dangerous for family to be there during a
25 certain period of time. That was confirmed by

1 these -- some of these specific pictures that he saw
2 on either a website or that his brother sent him
3 that made him too scared to return back to Mexico or
4 be around his brother for a certain period of time.

5 THE COURT: All right. We can --
6 we'll cross that bridge when we get to it, then, on
7 those.

8 Then we jump from 16 to 29, which is
9 DPS records.

10 MR. MORRIS: Those are plea
11 agreements.

12 MS. COGLIANO: 19 through 28 were all
13 plea agreements that were provided by the
14 government.

15 THE COURT: These are co-defendant
16 witnesses?

17 MS. COGLIANO: Yes.

18 THE COURT: Do you have any objection
19 to those?

20 MR. ALANIZ: On those, Your Honor,
21 some of the plea agreements, like the McAllen ones,
22 don't have a factual basis in the agreement itself.
23 The others -- some of the others do have factual
24 basis for the plea, for the Court to accept a plea.

25 Our objection is that that factual

1 basis is not a statement under *Jencks*. So it's not
2 a statement of the defendant or the person whose
3 plea agreement it is.

4 So we want to make sure that that
5 statement or those facts in there cannot be
6 attributed to as a statement of that witness. That
7 is why we object because of that.

8 Now, if they want to redact the
9 factual basis, then we have no problem with the plea
10 agreement. Our problem is they're going to say,
11 Look, in the factual basis, it said nothing about
12 our defendant. Well, the witness -- the defendant
13 in that case didn't draft that factual basis. The
14 government's attorneys did. And we drafted it with
15 only one thing in mind; is to cover the elements of
16 the offense.

17 And under the *Jencks Act*, 18 United
18 States Code, 3500, that factual basis does not fall
19 under the definition of a statement under the *Jencks*
20 *Act*.

21 THE COURT: I think -- well, I won't
22 speak for Mr. Morris, if you want to address. We
23 used the podium for the first time in a year this
24 morning. We're working our way back.

25 MR. MORRIS: The procedure of the plea

1 is that this factual basis is read in open court and
2 the defendant is asked if he agrees with the factual
3 basis. Consequently, he adopts the language in this
4 factual basis. And, you know, we think that, as
5 such, that we should be able to use it as a prior
6 statement.

7 THE COURT: I'm going to admit those.
8 Okay.

9 MR. ALANIZ: To let the Court know, to
10 put the objection on the record, Judge, that under
11 the *Jencks Act*, the factual basis is not covered as
12 defined as a statement.

13 THE COURT: I'm not ruling that it is.
14 I'm just ruling they can question your witnesses.

15 MR. ALANIZ: Okay. No problem.

16 THE COURT: You put them on the stand,
17 they're open to being crossed on then.

18 All right. 29.

19 MS. MACDONALD: No objection to 29.

20 THE COURT: It's admitted.

21 Let me go back. And I assume there
22 won't be an objection to this. I'll entertain a
23 motion to withdraw those plea agreements for any
24 witness that doesn't testify, if there is somebody
25 that doesn't testify.

1 MR. ALANIZ: I was going to ask the
2 Court. There may be some witnesses in there that we
3 might decide not to call.

4 THE COURT: If that happens, I'll
5 rethink this.

6 Okay. 29 looks like, maybe, a ticket
7 from the City of Three Rivers?

8 MS. MACDONALD: Yes. It's a certified
9 driving record from DPS of the defendant. We have
10 no objection.

11 THE COURT: So 29 is entered. And I
12 have a 30A, but no 30.

13 MS. COGLIANO: And there's a 30A, B,
14 and C. 30B are text messages between our client and
15 law enforcement. I was talking to the government
16 about removing from that exhibit. It's like a 55-,
17 60-page exhibit because there's a bunch of spam text
18 in the middle. I wanted to make sure they had all
19 of them. But we've agreed to remove all the spam
20 text.

21 So when I provide the Court with the
22 color copies of all of that, I will include -- but I
23 believe there is no objection to just the text
24 messages between our client and the agent.

25 MS. MACDONALD: That's correct.

1 THE COURT: All right. 30A, B, and C?

2 MS. COGLIANO: Yes, Your Honor.

3 MS. MACDONALD: No objection.

4 THE COURT: They're admitted.

5 31 looks like a printout from the
6 Rhino Collision Center.

7 MS. MACDONALD: No objection.

8 THE COURT: It's admitted.

9 32 is a short-form lease agreement.

10 MS. MACDONALD: We object because the
11 last page, the signature page that establishes that
12 this was actually executed, is missing. But subject
13 to us getting that last page, we would have no
14 objection.

15 MS. COGLIANO: We're looking for the
16 last page. I have to say, the records at that time
17 aren't the most organized. We do have a witness
18 that will come testify that it was executed.

19 If the government would like, we also
20 have a check of rent from Hertz to Rhino Collision,
21 or RH Collision, when they started paying rent at
22 the execution of this lease agreement. But we do
23 have people looking for that last page since that
24 was pointed out.

25 THE COURT: Why don't I defer on 32

1 until your witness testifies.

2 33 is another Rhino Collision Center
3 document that lists the employees. Any objection?

4 MS. MACDONALD: No objection. I see
5 that the full social security numbers are there.
6 Perhaps, they should be redacted, the last four
7 numbers.

8 MS. COGLIANO: I absolutely agree with
9 that, Judge.

10 THE COURT: So when you replace
11 copies, counsel, will you redact the socials?

12 MS. COGLIANO: Yes.

13 THE COURT: 34 is a "To whom it may
14 concern."

15 MS. MACDONALD: No objection.

16 THE COURT: 35 is a record from Zamora
17 Wrecker Service?

18 MS. MACDONALD: We object. Actually,
19 our copy's illegible. Counsel will provide us with
20 the original. Based on that, no objection.

21 THE COURT: So, it's admitted. But,
22 Ms. Cogliano, you'll get them one they can read?

23 MS. COGLIANO: Yes.

24 THE COURT: And also, one I can read.

25 MS. COGLIANO: And one I can read.

1 THE COURT: All right. 36, more Rhino
2 Collision Center expenses?

3 MS. MACDONALD: No objection.

4 THE COURT: It's admitted.

5 37 is a calendar of May of 2011.

6 MS. MACDONALD: No objection.

7 THE COURT: It's admitted.

8 38 is a map -- Google Maps.

9 MS. MACDONALD: No objection.

10 THE COURT: It's admitted.

11 39, an Organized Drug Enforcement
12 Administration, Task Force Report.

13 MS. MACDONALD: We object. That's
14 work product. It's all hearsay.

15 MS. COGLIANO: This document isn't
16 being offered for the truth of the matter asserted.
17 It's being offered -- part of our theory is the
18 trajectory of this investigation and how it changed
19 and why.

20 And that is reflected in some of the
21 differences between the initiation report and the
22 interim report that is the next exhibit. It also
23 shows the amount of law enforcement agencies that
24 signed off on this task force that were part of this
25 task force.

1 Another part of our theory is, you
2 know, the extensive investigation that was done and
3 lots of different investigative techniques that were
4 used; none of which created any hard evidence
5 against our client.

6 THE COURT: Are we going to have
7 anybody involved with either 39 or 40 that is going
8 to testify?

9 MS. MACDONALD: Yes. Those are our
10 case agents. They'll be here testifying live.

11 MR. ALANIZ: Basically, under the OSHA
12 rules, we have to submit these interim reports every
13 six months. It's done by an agent to summarize if
14 anything has changed. But it has nothing to do with
15 the actual facts of this particular prosecution.

16 THE COURT: I'm not admitting them; 39
17 and 40. But if the agent is on the stand and this
18 is his report or he's working on this report, I
19 mean, y'all can certainly question him about it.
20 Later on, if it becomes evident that it should
21 be admitted -- right now, it's a long report with
22 a lot -- it does have a lot of hearsay, no doubt, in
23 it.

24 But I understand, you know, from the
25 defense standpoint, you're going to say: Here is a

1 30-page report. Is my client mentioned anywhere in
2 this, other than on your list of suspects? He's not
3 even on the list of suspects. That is his brother.

4 MR. MORRIS: Not at that point, I
5 don't believe.

6 THE COURT: So, I mean, I'm just
7 giving both sides a heads-up that I think that is
8 legitimate cross-examination.

9 All right. 41 and 42 are
10 organizational charts.

11 MS. MACDONALD: We object to both of
12 those. These were prepared by an unknown analyst at
13 an unknown date and time. They are the analyst's
14 work product. The analyst prepares them based on
15 information the analyst receives from the agent at
16 any given point in time, which changes, obviously,
17 as cases progress and as investigations continue.

18 We object to relevancy, work product.
19 If they want to make their own summary chart or
20 their own organizational chart, that's fine.

21 MS. COGLIANO: The first one was
22 made -- Exhibit 41 was made on September 13 of 2012.
23 Exhibit 42 was made on July 10 of 2013. I can
24 provide the government with the reports that state
25 which analyst made it and which agent directed them

1 in how to make it and which agent adopted it as what
2 they did intend that person to make.

3 And the point is not that we agree,
4 necessarily, with the content one way or the other.
5 But the point is that our client's never listed
6 anywhere on the kidnapping crew charts, and he's
7 being charged with kidnapping.

8 THE COURT: I think this goes with 39
9 and 40. So I'll defer on that. Obviously, you can
10 certainly question the witnesses and establish that,
11 Hey, he's nowhere to be seen on this.

12 43 kind of appears to be a letter in
13 Spanish.

14 MS. MACDONALD: We received those
15 moments before this hearing started. We don't have
16 copies yet.

17 They are jail letters written in
18 Spanish. There is an English translation at the
19 end. We object as to relevancy. They do not
20 mention the defendant. These are people that won't
21 be testifying, and it's hearsay.

22 MS. COGLIANO: These are letters we
23 received from the government. The translation was
24 made by the government's linguist. The -- they're
25 not being offered for the truth of the matter

1 asserted within the letter. These two letters were
2 picked to show how easy it is for communications in
3 code to be sent to people while they're in custody;
4 telling them what to say, telling them who to talk
5 to, telling them who's been arrested.

6 THE COURT: Give me an example of what
7 you're talking about. I'm looking at 43 now.

8 MS. COGLIANO: Addy speaks Spanish.

9 MS. MIRO: Do we have copies?

10 One of them, Judge, talks about them
11 wanting to know about other people's court cases and
12 wanting to know about what is going on with the
13 court system.

14 MS. MACDONALD: So those are
15 defendants not charged in this case. I think those
16 points could be made, generally, through questioning
17 of witnesses. I think it would be confusing to a
18 jury to see handwritten letters from inmates who are
19 not a party to this case, not charged in this case,
20 not going to be testifying in this case.

21 Also, even though counsel claims
22 they're not being offered for the truth of the
23 matter asserted, there is danger of hearsay.

24 THE COURT: Hold on. I'll read the
25 English translation.

1 I'm not admitting 43 at this moment.
2 I don't see the relevance of it at all. Later on,
3 if you can show me, I'll reconsider.

4 That's the last exhibit I have. Is 43
5 the end of it?

6 MS. MIRO: Yes, sir.

7 THE COURT: Okay. I also have -- we
8 had an issue, from the last hearing, that had to do
9 with some documents that were turned over that were
10 somewhat voluminous.

11 That the point the defendants were
12 wanting to make is that, in this 10,000 gigabytes,
13 or whatever it was, that Mr. Villarreal's name was
14 never mentioned. And at one point, you were going
15 to let him interview the agent. I think y'all were
16 going to work on a stipulation.

17 Where are we on that front?

18 MR. ALANIZ: We have provided the case
19 agent over the phone, a conference call. They spoke
20 to him. And he'll be able to testify if they want
21 to call him as a witness. So he's available.

22 THE COURT: I assume -- is he going to
23 say that Mr. Villarreal was not mentioned in any of
24 those records?

25 MR. ALANIZ: That's right.

1 MR. MORRIS: That's right. We would
2 like to have him here testifying, so we can tell the
3 jury --

4 THE COURT: Y'all coordinate him on
5 the day you want him to. Mr. Alaniz, I'll expect
6 you to have him here when they need him.

7 MR. ALANIZ: Yes, sir. We will.

8 THE COURT: I'm going to ignore that
9 one for a minute.

10 Let's start with the government's
11 motion to exclude the late-alibi witness.

12 Ms. MacDonald?

13 MR. ALANIZ: I've got it. A couple of
14 things.

15 First of all, in terms of alibi: We
16 asked for a notice quite a while ago, as the motion
17 shows, and they giving us these alibi witnesses way
18 past the time that the Court ordered them to give us
19 the alibi notice.

20 But beyond that, Judge, the issue in
21 this case -- first of all, alibi doesn't apply to
22 the conspiracy to kidnap count. The case law is
23 real clear. Because all you need for a conviction
24 under conspiracy is the agreement. So where the
25 defendant was, at the particular point in time, is

1 irrelevant as for the conspiracy count on
2 kidnapping.

3 As to the alibi, in regards to the
4 actual substantive offense which occurred on May 28
5 of 2011, in that case, Judge -- the evidence is
6 going to show, in this case, that the defendant's
7 involvement was not at a one-time/one-place event.
8 It was basically a weeks-long event where they
9 planned the kidnapping, did surveillance.

10 And the defendant -- our theory is
11 going to be: He was not a principal, because he was
12 not involved on the day they went and picked up this
13 particular victim and took him into Mexico. On that
14 day and before, he was an aider and abettor in that
15 particular offense.

16 So then asking for an alibi -- for the
17 Court to tell the jury that: If they find that
18 their alibi defense or that we haven't disproved
19 their alibi defense beyond a reasonable doubt, that
20 they showed him not guilty is wrong. Because he
21 committed or did other things during that period of
22 time. That he has liability as an aider and
23 abettor.

24 If they want to bring in an alibi
25 witness -- or, I'm sorry, a witness to testify that

1 on May 28 of 2011, he was not in Mission, Texas,
2 that is just to impeach any witness that the
3 government may call that says otherwise. But that
4 does not absolve him of liability as an aider and
5 abetter for the substantive offense of kidnapping.

6 MR. MORRIS: The defense's theory is
7 that Mr. Villarreal was not present during the
8 kidnapping or the planning of the kidnapping or the
9 steps that were taken leading up to the kidnapping.
10 Several of those events occurred on the 26th -- or
11 we believe they did, and we'll develop through the
12 testimony that they did. And Mr. Villarreal,
13 according to the map -- this will be in evidence --
14 was 500 miles away.

15 Now, the history on the alibi notice
16 was that it was contested. And a previous counsel,
17 the Court -- and I don't remember if it was this
18 Court or another Judge -- ruled it could be used. I
19 guess we could say that: Well, maybe it's not
20 technically an alibi witness. It's just a fact
21 witness that contradicts what we think several of
22 the government's witnesses are going to say. And
23 it's a very important contradiction.

24 As far as it being untimely --
25 frankly, being criticized for being untimely by the

1 government is like being called ugly by a frog.
2 They're still giving us witnesses as of, I think,
3 yesterday. And last week, we got two reports of an
4 interview with our client that all counsel have
5 asked for for four years now.

6 So the witness is going to contradict
7 fact witnesses put on by the government as to the
8 events of the offense. And we found the witness.
9 We had to, you know, do some things to develop the
10 testimony to make sure it was accurate, and then we
11 got the witness to them as quick as we could.

12 MR. ALANIZ: Beyond the late notice,
13 it's just not sufficient based on what the rule
14 requires. They have to tell us where he was at what
15 point in time and who -- things more specific.

16 We have no idea who we need to talk
17 to. We have the witness who will testify. But I
18 don't know whether they were in Austin, what place
19 in Austin they were, what date they were there, how
20 long was he -- how long he was in Austin or away
21 from Mission, Texas. We have no idea at this point.
22 They just told us, We have a witness who says that
23 he was somewhere in Austin, Memorial Day weekend,
24 2011. That's it.

25 But beyond the alibi notice, our main

1 point is that it's not a true alibi. It goes,
2 possibly, to the weight that the jury wants to give
3 the credibility of any witness that the government
4 puts on that says he was in Mission, Texas, on that
5 day. But it's not an alibi defense to the way that
6 the government believes he's liable under the theory
7 of aiding and abetting. That's the principle.

8 THE COURT: Here's what I want you to
9 do. Mr. Morris, I want you to provide the
10 government with all the specifics that surround
11 whatever conversation this lady thinks she can
12 testify to. I'll take it under advisement as to
13 whether it's admissible or not. But I'm not
14 striking the witness out of hand.

15 MR. ALANIZ: And, also, any other
16 witnesses, Judge. Because I think the notice we've
17 been given so far is that the defendant may testify
18 to that. And if there are any other witnesses who
19 are going to corroborate that he was not in Mission,
20 Texas, on that date, we would also need that
21 information.

22 THE COURT: Is there anyone else that
23 testifies to that?

24 MR. MORRIS: Possibly, the defendant's
25 wife.

1 THE COURT: I was going to say,
2 because she's in that notice. It says that she was
3 there.

4 Give them specifics of who was there
5 and who could testify to that event.

6 MR. MORRIS: We'll do.

7 We also have a government's witness --
8 motion to strike two different experts. Let me take
9 the person that wrote the book first. I'm looking
10 for his name here.

11 MS. COGLIANO: Michael Deibert, Judge.

12 THE COURT: All right. The
13 government -- Mr. Alaniz, you want to talk to that
14 one?

15 MR. ALANIZ: It would be
16 Ms. MacDonald.

17 MS. MACDONALD: We're objecting.
18 First, the defense has never filed a formal notice
19 on the record of this. We just received an e-mail.
20 Notice has not been properly filed whatsoever with
21 regard to, either, expert or alibi. There is
22 nothing on the record. That is number one.

23 Number two, this journalist that is
24 being offered as an expert in -- I don't know what
25 subject matter -- I guess, the Gulf Cartel, in

1 general, and the Zeta Cartel. It appears that he
2 will offer general testimony about the Gulf Cartel
3 and cartel rival wars with the Zetas.

4 Our position is: That's not relevant,
5 really. And, more importantly, it's not helpful to
6 the jury to determine any fact in issue which is
7 required under Rule 702, which governs the admission
8 of expert testimony. So his opinion on the Zetas
9 and Gulf Cartel, generally, is not expert testimony
10 under Rule 702.

11 Also, I think it would be very
12 confusing to a jury. It might mislead the jury and
13 will waste time. We have a long trial and we're up
14 against a holiday weekend. So under 403, that is
15 another ground for the Court to exclude it.

16 THE COURT: What would be the
17 relevance of his testimony?

18 MS. COGLIANO: Judge, our position is
19 that he's, both, a fact and an expert witness
20 because he was actually in and around Reynosa;
21 specifically, around Tamaulipas exactly during the
22 time of the conspiracy, actually working with Gulf
23 Cartel members and learning about their structure in
24 order to write this book.

25 I do -- I did provide the government

1 with a page and a half summary. He's working on a
2 more detailed one. I only learned he existed last
3 week. So that is why we're still working on that
4 kind of a thing.

5 The other part of his testimony, one,
6 is going to be about the infighting in the Gulf
7 Cartel. Because that is directly relevant to, as we
8 discussed before, that our client wasn't supposed to
9 be around his brother or anywhere near any of that
10 during that time because of how dangerous it is.

11 It also goes to where Gringo Mike was
12 in charge of, at what time. Because several of the
13 individual conspiracies that are being alleged by
14 witnesses talk about cocaine being distributed out
15 of different plazas. And that's not how it works.
16 He was in charge of one plaza at a given time. He
17 was in charge of the distribution at a given time.

18 So to say that Lee Roy was helping him
19 out of a different plaza with a different gang,
20 working with the Beltrans or working with somebody
21 that wasn't working out of Reynosa, is directly
22 relevant to whether our client was helping
23 distribute cocaine.

24 THE COURT: How would your expert know
25 that?

1 MS. COGLIANO: Because when he was
2 writing this book, he spent the years of 2009,
3 maybe, to 2014 living in that area, not only reading
4 all of the articles in the news but he was actually
5 interviewing people with direct connections to the
6 cartel, directly involved with the cartel.

7 And that is how he, I mean, wrote the
8 book on the Gulf Cartel between -- in Tamaulipas,
9 between the years 2011 and 2014. It's the exact
10 area and the exact time period that's being alleged
11 in this case.

12 MS. MACDONALD: I would assume a
13 journalist would have sources. So this would all be
14 hearsay. I assume a journalist was not working
15 directly with cartel members and would have
16 firsthand knowledge.

17 THE COURT: An expert can rely on
18 reliable hearsay.

19 MS. COGLIANO: He was. He was working
20 with actual --

21 THE COURT: How would you even verify
22 any of this?

23 MS. COGLIANO: How can we verify it?

24 THE COURT: Well, how can I verify?
25 For instance, Deibert, one, he's got

1 to be proven as an expert. And what -- his only
2 expertise is as a journalist. He's not an expert in
3 drug trafficking, I assume.

4 MS. COGLIANO: No. He has testified
5 as an expert witness in asylum cases before, because
6 he has direct personal knowledge and because, as you
7 said, experts can rely on hearsay. That knowledge
8 from other places, as well as to the violence, as to
9 who is actually in danger and who isn't in danger,
10 who is in danger because of whom.

11 On top of that, he knows about the
12 cartel training program. So our client is charged
13 with teaching soldiers and assassins of the Gulf
14 Cartel how to use guns and how to use duct tape. So
15 part of his testimony is going to be that these
16 sicarios that are employed, specifically for this
17 purpose, go through a training program. And it was,
18 actually, specifically developed by the Gulf Cartel
19 when the Zetas were an enforcement arm of that
20 cartel. So it's actually a very unique, very
21 specific thing that was developed by the people that
22 are alleged in this case.

23 THE COURT: Well, that was before
24 2011, though.

25 MS. COGLIANO: He was there during

1 that time. And so his --

2 THE COURT: Because I was right across
3 the river at that time.

4 MS. COGLIANO: I mean, so we can -- we
5 can have a *Daubert* hearing and ask him these
6 questions before he testifies. I think he would
7 know better than me how he knows that.

8 But his experience -- Judge, it's not
9 unusual for journalists to be invited in by cartels
10 to learn about what they do. The cartel members are
11 very machismo. There's documentaries where they
12 actually let journalists film them, as long as they
13 don't bring government with them. They like the
14 attention. They like being in the books. They like
15 being in the movies.

16 So it's absolutely not a far stretch
17 to believe that he was actually in touch with these
18 people. Actually, before he agreed to be a part of
19 our case at all, he wanted to talk to his sources,
20 because he doesn't testify just for anybody.

21 MS. MACDONALD: We received a letter
22 summarizing what this witness will say. And part of
23 his testimony that the defense wants to adduce will
24 be an opinion on the ultimate issue.

25 In the letter, he says: I have never

1 heard of the defendant, Lee Roy Villarreal, until
2 this trial. Such an individual -- that name would
3 have been known to me, had he actually been in the
4 cartel. Because I don't know the name, I believe
5 there is a strong possibility that the defendant is
6 being wrongfully prosecuted.

7 That, obviously, goes to the ultimate
8 issue. His opinion on the guilt or innocence or the
9 prosecution of the defendant is not relevant to any
10 material issue in the case.

11 MS. COGLIANO: And I completely agree
12 with that. I absolutely do not expect that he
13 should be able to testify that he believes anybody
14 is being wrongfully prosecuted.

15 MS. MACDONALD: We'll have members
16 from cartel here live; people actually in the cartel
17 who can talk about the inner workings of the cartel.
18 And all the points that defense wants to adduce can
19 be elicited through cross-examination of the actual
20 cartel members.

21 THE COURT: I'm not excluding him now.
22 We'll see how the trial goes. We'll see if it
23 becomes relevant.

24 First of all, there is no way in the
25 world I will let him opine on, Just because I

1 haven't heard of him means he wasn't involved.

2 MS. COGLIANO: I agree.

3 THE COURT: But, secondly, look, I
4 could write a book on how to be a pro-quarterback.
5 But if you ever saw me throw a football, you
6 couldn't confuse me as being an expert on being a
7 pro-quarterback. I mean, just because you can write
8 a book on something doesn't make you an expert.

9 Okay. The second expert -- actually,
10 I think it's kind of interesting. I'm actually kind
11 of intrigued by -- but, again, I have a problem
12 with, Is he an expert?

13 MS. COGLIANO: Right. He's an
14 investigative journalist. I understand that is
15 different from, like, having -- from being an
16 expert, like in a science or something like that. I
17 think what sets him apart, in general, is that he
18 lived it. He went there to be a part of it.

19 THE COURT: No, I understand that. I
20 assume, he's not going to get up and say, Yeah, I
21 was helping the cartel.

22 To shift gears, let's talk about the
23 other expert, the translator.

24 MS. MACDONALD: The government is
25 objecting and asking the Court to exclude this

1 witness as well. The translator, clearly, is a
2 qualified interpreter. We agree with that. But
3 she's being offered to offer expert opinion on her
4 difficulty in distinguishing voices on the audio
5 that she listened to. I don't believe that is
6 proper expert testimony under Rule 702.

7 The jury will hear the audio
8 themselves and can make that determination. The
9 linguist who drafted our transcript will also be
10 available to testify. And they can be asked on
11 cross-examination.

12 It's not like this witness is being
13 offered as an expert on voice identification. It's
14 not like she, for example, listened to an exemplar
15 of the defendant and saying, That is not the same
16 voice I hear. She's just going to come and say, I
17 had a hard time figuring out who was who. I don't
18 think that is helpful to any issue for the jury. I
19 think it would waste more time and confuse issues.

20 MR. MORRIS: Yes. Again, put this in
21 context, we got a transcript in 2016. And then,
22 recently, we got another one. And there were
23 upwards of 50 changes where their interpreter says:
24 No, that guy I said was talking last time, that
25 wasn't who was talking. Now I'm telling you this

1 person was talking.

2 Mr. Alaniz says: Well, we have the
3 guy that was in the meeting that identified people.
4 Why did he identify them differently in 2016 than he
5 did recently?

6 What this expert will say is, you
7 know: A lot of times, how you determine the speaker
8 is someone has a distinctive voice and you hear that
9 person. You may not know who it is, so you
10 attribute that as "Speaker 1." Then you're able to
11 follow, through the translation, that person.

12 Her testimony would be: You can't do
13 that in this case. That there are several people
14 that sound the same. And it's just -- this
15 particular audio recording is not susceptible to
16 identification of the speakers by that manner.

17 THE COURT: Okay. She's not an
18 expert, though, in identifying the voices. The
19 government admits she's an expert bilingualist or,
20 maybe, multi-linguist. That she can translate it.

21 But unless she -- she has no
22 familiarity with any of the voices other than in her
23 expert capacity, I assume. And so, what she's going
24 to testify to is: I, the expert, can't tell them
25 apart.

1 MR. MORRIS: Well, I think --

2 THE COURT: Other people who are
3 actually familiar with the voices might be able to
4 tell them apart.

5 MR. MORRIS: They may be. But we
6 don't know how this transcript was developed.
7 Was -- Mr. Alaniz says today that it was developed
8 by somebody that was in the conversation identifying
9 the voices. But, again, that begs the question of:
10 Why couldn't they identify them in 2016?

11 MS. MACDONALD: No, Your Honor, what
12 happened was an FBI linguist prepared the first
13 draft. Prior to trial, in preparing for trial, we
14 had the actual -- one of the speakers who is on the
15 transcript, who will be a witness in this case,
16 review it to make sure everything was accurate. And
17 he said, No, no. And he caught mistakes that the
18 linguist made, because the linguist doesn't know the
19 people. So that is why they changed.

20 Both witnesses will be here for trial.
21 Our view is that these things can be elicited on
22 cross-examination. All these points can be made.

23 THE COURT: If your linguist says
24 something different than what she says, I may let
25 them call her. But I'm not going to let them just

1 testify that you can't -- you can confuse these
2 voices. Because, number one, the jury can figure
3 that out; and, number two, she has no expertise in
4 it.

5 Okay. Today there was a lengthy
6 motion for discovery filed. Tell me about this,
7 Mr. Morris. It's your motion. Defendant's second
8 supplemental motion for discovery and exculpatory
9 material that was filed sometime this morning.

10 MS. COGLIANO: Yes. And most, if not
11 all of the things contained in here, is all directly
12 related to things that we have received from the
13 government since our last appearance, which is why
14 the timing of this is what it is. We are receiving
15 things. And I know we're giving things this week as
16 well. But we are receiving a lot of evidence in the
17 past couple of weeks that has been available to the
18 government since the beginning of this case.

19 The first thing, this Luis Oberto
20 Rivera was added to the government's witness list on
21 June 7. This is a brand-new witness. His name
22 hasn't shown up anywhere in the discovery up until
23 this point.

24 It's an allegation that involves the
25 distribution of cocaine with no -- none of the same

1 co-defendants or co-conspirators or the same even,
2 like, method and planning; any of the same aspects
3 of the conspiracy as any of the prior alleged
4 conspiracies. It's also outside of the time of the
5 indicted conspiracy.

6 And we've only received the two
7 statements from that investigation that were made by
8 that specific witness that involved our client;
9 which means, we have no way of, you know, seeing why
10 this investigation didn't result in the interview
11 and detention of any of the people that they're
12 alleging this person was working with.

13 We can't look at whether there was
14 surveillance done that should have shown our client
15 and didn't. We don't really have any way to attack
16 the veracity or the believability or truth of what
17 this new allegation is.

18 So we're asking, first, for this
19 witness to be excluded, because we just cannot
20 prepare for an entirely new conspiracy allegation at
21 this stage. We don't have any mechanism to
22 investigate it. And, alternatively, for discovery
23 on this case. If our client had been charged as a
24 co-conspirator in the case where this witness was
25 charged, then, certainly, we would receive the case

1 file that has to do with that investigation. And
2 that is going to be a recurring theme here, Judge,
3 for the other requests.

4 THE COURT: What say the government?

5 MR. ALANIZ: We learned about
6 Mr. Rivera not too long ago regarding a debrief that
7 he was involved in. He was charged in 2007, I
8 believe, 2009, in Grand Rapids, Michigan. He was
9 arrested, along with some other co-defendants, not
10 on a cocaine case but a marijuana case. He was
11 indicted, along with two or three other people.

12 During a proffer -- during a debrief,
13 he gives a statement to agents about the fact of
14 where he got the marijuana from. He said he got it
15 from this defendant. That is the only evidence in
16 this case about the defendant's involvement.

17 There was no Indictment against
18 Mr. Rivera. There was no charges against him.
19 Nobody targeted him. This was just a statement that
20 this witness, who was involved in that conspiracy,
21 made regarding where he got the marijuana that he
22 delivered to -- in Michigan.

23 Whether or not it's 404(b) -- I think
24 this morning we filed a notice of 404(b). In case
25 the Court finds that this evidence is not intrinsic

1 to the charges in this case because it falls a
2 couple years outside the charged conspiracy, we
3 believe that under 404(b) that this evidence is
4 appropriate. It's relevant to show this defendant's
5 involvement in drug trafficking.

6 THE COURT: But what about -- assuming
7 you're right, hypothetically, aren't they entitled
8 to, like, the entire file on this guy?

9 MR. ALANIZ: Well, it's 2007. I don't
10 know where the file is. But what is going to be in
11 the file is that there was a prosecution of three
12 individuals. That's it. The only reference to this
13 defendant is in that one report.

14 As a matter of fact, we gave them the
15 post-arrest report of this witness where he doesn't
16 mention Mr. Villarreal at all. He doesn't mention
17 Mr. Villarreal until after he debriefs for safety
18 valve. The only two reports that are mentioned of
19 this defendant are those two reports, and they've
20 been provided to defense counsel.

21 There is no other evidence --

22 THE COURT: What else is in the file?
23 I mean, they're worried about having *Brady* material
24 and *Jencks* material.

25 MR. ALANIZ: Right. As far as I know,

1 the only thing that's in the file is what basically
2 lead to the Indictment of those individuals in that
3 case, and that's it.

4 THE COURT: It sounds like you haven't
5 seen the file either.

6 MR. ALANIZ: No, I haven't seen the
7 file because it's a 2007, 2009 file. We could try
8 to find it.

9 But, again, every time we have a
10 witness, they say, Look, it's a different case. We
11 want the whole file. I mean, the fact that the file
12 doesn't show your person's involvement or your
13 client's involvement is not *Brady*.

14 I mean, you know --

15 THE COURT: Well, the problem is,
16 though, you haven't reviewed the file either,
17 though.

18 MR. ALANIZ: Right.

19 THE COURT: You can't tell them there
20 is not *Brady* material in there.

21 MR. ALANIZ: That's correct. That
22 file, I have not reviewed. That is correct.

23 THE COURT: Okay. I'm going to order
24 you to provide the complete file to them before this
25 gentleman testifies. If it hasn't been provided to

1 them, I'm probably not going to let him testify.

2 MR. ALANIZ: Yes, Your Honor.

3 THE COURT: I guess, it's the same
4 problem with Mr. Serna and Mr. Salinas? Is it the
5 same marijuana incident?

6 MR. ALANIZ: No, sir. Mr. Serna, we
7 have no statements from Mr. Serna. We've tried to
8 contact him, tried to subpoena him. We haven't been
9 able to find him. So he's not part of our case.

10 Mr. Salinas is a lawyer who represents
11 a defendant who was going to testify. Whether or
12 not that defendant testifies or not is still up in
13 the air. Salinas has not given any statements other
14 than what he told us regarding how he assisted the
15 defendant, was cooperating and getting him into the
16 U.S. That's it. Nothing more. Nothing about this
17 defendant, other than he arranged parole of his
18 client from Mexico into the U.S. through the El Paso
19 port of entry.

20 MS. MACDONALD: He saw the defendant.

21 MR. ALANIZ: And saw the defendant in
22 Juarez, Mexico, along with his attorney, Daniel
23 Garcia, also.

24 THE COURT: And he saw them?

25 MR. ALANIZ: Saw them there, yes, sir,

1 when he assisted Fabio Chapa in her process of being
2 paroled into the U.S. by the FBI.

3 THE COURT: What would be there? What
4 did he see them doing -- or see Mr. Villarreal --

5 MR. ALANIZ: Saw them together.
6 That's it.

7 THE COURT: At, like, the port of
8 entry or airport?

9 MR. ALANIZ: No, in a hotel in Juarez,
10 Mexico.

11 THE COURT: So the entirety -- let me
12 break it up. Mr. Salinas is the lawyer?

13 MR. ALANIZ: He was contacted by
14 Ms. Chapa.

15 THE COURT: Okay. He helped get her
16 paroled into the United States?

17 MR. ALANIZ: Yes, sir.

18 THE COURT: When would this have been?

19 MR. ALANIZ: This was shortly after
20 the defendant's brother was killed in 2013.

21 THE COURT: All right. And he's going
22 to testify that he saw the defendant and Ms. Chapa
23 and Mr. Garcia, in a hotel in Juarez, together?

24 MR. ALANIZ: He saw the defendant and
25 Ms. Chapa. He overheard the defendant talking to

1 Mr. Garcia over the phone. But he never saw him
2 personally.

3 THE COURT: So all he can say he saw,
4 personally, was the defendant and Ms. Chapa?

5 MR. ALANIZ: Yes. That's it.

6 THE COURT: That's the entirety of his
7 testimony?

8 MR. ALANIZ: Yes, sir.

9 MR. MORRIS: Is he going to testify
10 about what he overheard?

11 MR. ALANIZ: There is nothing we'll
12 put on about what he overheard. It's not relevant
13 to this case.

14 THE COURT: Who is Mr. Serna?

15 MR. ALANIZ: He's a person who comes
16 up in some investigations, but we haven't been able
17 to serve him. So I don't know where he is. We
18 don't have any statements of his at all that we can
19 provide.

20 THE COURT: The next person is Juan
21 Francisco Saenz?

22 MR. ALANIZ: Yes, sir. That's the
23 one.

24 MS. COGLIANO: Number 3, it's a little
25 different. It's not about any specific witness. I

1 just noticed that there was a 404(b) report that
2 listed an entire case file named "Lee Roy
3 Villarreal." I don't know if there's more reports
4 or not in that.

5 I just know that sometimes these
6 Homeland Security reports, the government hasn't
7 gotten the whole thing; if there is *Brady* in there
8 or if there is more information about what they
9 found in these. Obviously, all we have is the one
10 thing -- one report about him. But I have no reason
11 to believe there is more than this one report in
12 that case file. I just don't know.

13 MR. ALANIZ: That's correct, Judge.
14 This is the one out of 2007? 2009?

15 MS. COGLIANO: Yes.

16 THE COURT: Those are the only
17 statements -- reports in there, because he was not
18 prosecuted for anything on those.

19 Does that stem from the marijuana
20 thing?

21 MR. ALANIZ: No. Those are in Starr
22 County, and they're 404(b) evidence. We have no
23 other reports other than those.

24 THE COURT: Juan Francisco Saenz
25 Tomas?

1 MS. COGLIANO: This is an individual
2 that took over the Gulf Cartel, was the head of the
3 Gulf Cartel for a short period of time after the
4 person who succeeded, Gringo Mike.

5 We recently received the factual basis
6 of his plea agreement, which lays out a really,
7 really extensive investigation not only into his own
8 distribution, but specifically into all of the
9 distribution by the Gulf Cartel during this specific
10 time period, 2017 -- 2007 to 2014.

11 And it lays out, specifically, the
12 distribution scheme out of Reynosa by Gringo Mike
13 during that time period. There's ledgers. I
14 included the factual basis as an exhibit to this
15 filing to show you just how extensive it is. It
16 references wiretaps that are different than the
17 wiretaps we interviewed Agent Gonzalez about. It
18 references ledgers, surveillance. A very clean and
19 neat determination of the players' involvement in
20 the distribution at that time, which is exactly what
21 our client is charged of running.

22 There's 15 pages just of a summary for
23 a plea agreement.

24 THE COURT: I'm with you now. What
25 are you asking for?

1 MS. COGLIANO: I'm asking for the case
2 file. I know this is going to be repetitive and
3 seem like a lot, but it's because of the way this
4 case is being prosecuted. It's not just one case
5 file and one conspiracy. It's a lot of different
6 things that have come out of a lot of different
7 investigations and prosecutions.

8 And this, in particular, similar to
9 our other requests, lays out a very in-depth
10 investigation into this scheme. Players that are
11 listed in that factual agreement are players that
12 are listed in the one that we discussed at the last
13 pretrial hearing that resulted in us talking to
14 Agent Gonzalez.

15 The only similarity about our client
16 is that he's not implicated at all in any of this
17 investigation. Our position is, very strongly, that
18 that is *Brady*.

19 MR. ALANIZ: Obviously, our argument,
20 again, is the same argument. A lack of evidence
21 that he was involved in this other conspiracy
22 charge, in the Eastern District of Texas in
23 Beaumont, is not *Brady* as to whether or not he's
24 involved in this conspiracy and this kidnapping.

25 The agent out of that case in

1 Beaumont, if they wanted to have him testify, he can
2 testify to the same thing that Mr. Gonzalez will
3 testify. We investigated. We were up on wires. We
4 never listened or intercepted. And Mr. Villarreal
5 was never a target of our investigation.

6 THE COURT: How did you get the plea
7 agreement that's attached?

8 MR. ALANIZ: We gave it to them
9 because Mr. Saenz Tomas will be testifying in this
10 case.

11 THE COURT: Ah.

12 MR. ALANIZ: So he's a witness on this
13 case.

14 MS. COGLIANO: Our position is that
15 it's not a different conspiracy. It's the exact
16 same substance, the exact same time period, the same
17 location.

18 The same head person, Gringo Mike, our
19 client's brother, is the distribution -- our client
20 is being accused by these witnesses of running the
21 distribution in the United States for everything his
22 brother did. And this is laying out the
23 distribution of cocaine into Atlanta, into Houston,
24 into the Midwest. These are all places that our
25 client is charged with distributing this.

1 It would be almost unheard of for our
2 client to not even come up in an investigation like
3 that, if he was in charge of the United States side
4 of the distribution for Gringo Mike during that time
5 period.

6 MR. ALANIZ: As the Court is well
7 aware, the Gulf Cartel is a name given to
8 individuals in northern Mexico, southern Texas, that
9 are involved in drug trafficking. It's not a finite
10 number of ten people. It's hundreds, maybe
11 thousands of people.

12 If you follow the logic that defense
13 counsel is telling the Court, every investigation
14 that's been done by DEA, FBI, HSI, ATF, in those
15 years that this defendant is charged where they
16 target either associates of the cartel, members of
17 the cartel, things of that nature, that is hundreds
18 or, maybe, thousands of investigations.

19 The fact that Mr. Villarreal was not
20 intercepted in 2014 or '15 on a separate
21 investigation, done on separate individuals who were
22 moving drugs across the border, is not *Brady* as to
23 this particular case.

24 Where does it end? Are we supposed to
25 give them every single intercept?

1 THE COURT: If you're going to have
2 this gentleman testify, they ought to at least be
3 able to look at the file.

4 MR. ALANIZ: We can provide the file.
5 It's going to be, I'm sure, very voluminous. I
6 don't know if they'll have time to look at it. That
7 is what we're trying to avoid, in terms of having
8 them say, Look, I need more time to be able to look
9 at this file.

10 When the file -- they can get the
11 evidence that the file contains from the case agent
12 who can testify, We never intercepted or had
13 any evidence that your client was involved.

14 THE COURT: Is the case agent, Juan
15 Francisco Saenz Tomas, going to testify?

16 MR. ALANIZ: He is not around because
17 he has left DEA. He no longer was a DEA agent, but
18 I'm sure there are other agents who worked with him
19 who still have the file. They can provide that to
20 the Court, if the Court needs it, or provide it to
21 defense counsel.

22 But there are witnesses that they can
23 call to basically make their point, which is: Look.
24 You were up and investigating this cartel in this
25 period of time. Did my client ever come up in your

1 investigation as a target? Did you ever intercept
2 it? Anybody talk about him? Those are the
3 questions that you can ask.

4 I'm not really sure what -- providing
5 a bunch of line sheets, wire intercepts, reports of
6 investigation into other targets, into other drug
7 traffickers, I'm not sure how that is relevant.

8 MR. MORRIS: I think that kind of
9 misstates what we're after. It's not that we want
10 to know everything that was learned about the Gulf
11 Cartel. Mr. Saenz included in his factual basis
12 were very specific types of transactions in a
13 specific area.

14 THE COURT: I'm going to order you to
15 produce any statements the government has regarding
16 him that he made; Juan Francisco Saenz Tomas.

17 MR. ALANIZ: We have. We've given
18 them all the statements that he's provided us.

19 THE COURT: Okay, but not that were
20 just provided to you.

21 MR. ALANIZ: From the case file. I'm
22 sorry.

23 THE COURT: I mean, I don't think you
24 were trying to be sneaky. But I want you to provide
25 anything the government has.

1 MR. ALANIZ: We've gotten all the
2 statements that he made to case agents in his case,
3 as well as any statements that he made to us during
4 our investigation. Yes, sir.

5 THE COURT: All right.

6 MS. COGLIANO: In lieu of our request
7 for the case file, which involves Gringo Mike and
8 the David Basante Tio, which was transcribed in that
9 plea agreement, we are happy to have the same
10 arrangement we had with Rene Gonzalez and talk to
11 the case agent about the fact that they investigated
12 this specific group doing this specific thing, and
13 that our client wasn't implicated.

14 THE COURT: I'm fine to accept that.
15 I think that's the easiest way around it.

16 Let me have a TV timeout here. I
17 mean, what is going to happen is -- and both sides
18 know the facts here. You probably know them better
19 than I do -- well, you do know the facts of this
20 case better than I do. But we both know how the
21 government operates and how the cartel operates.

22 You guys, the government, you're not
23 going to get around their cross-examination that is
24 going to say, Hey, you did this yearlong
25 investigation or two-years long, and no one ever

1 heard of Mr. Lee Roy Villarreal. I mean, they're
2 going to be able to do that. They can't get around
3 the fact that, on direct or redirect, you guys are
4 going to say, Tell the jury how investigations work.
5 You focus on the guy you've caught or the guy you
6 got trapped, and that's how we proceed.

7 I mean, so both -- I mean, we're going
8 to have that tension all the way through this trial;
9 because you're trying to concentrate on one
10 defendant that no one else has concentrated on, and
11 they're trying to essentially prove a negative. And
12 so, I mean -- and they're both valid points.

13 I'm sure, before it's all over, the
14 jury will be sick of both of you. They'll be
15 saying, Yes, we know how the investigation works;
16 and yes, we know his name is not in the file.

17 But that is -- it's going to be
18 unavoidable in this trial. That's just the way it's
19 going to be. They have a right to do that, just
20 like you have a right to explain, you know: Mr.
21 Villarreal was down at Starr County. This
22 investigation was out of Beaumont. That type of
23 thing. It's just going to happen.

24 MR. ALANIZ: Yes, sir.

25 THE COURT: All right. What about

1 Benicio Lopez?

2 MS. COGLIANO: We have very, very
3 little information about this person. We have one
4 statement made by him, and we have Giglio notice.
5 And, you know, he has been charged in a lot of
6 different places for a lot of different things.
7 He's received a lot of benefit. He already has
8 been -- you know, the government's recommended him
9 be on parole. And then three days later, that
10 parole was revoked and we don't know why.

11 He was -- because of his testimony, I
12 believe, in this case -- and Mr. Alaniz, you can
13 correct me if I am wrong -- his state court sentence
14 has been cut in half for a very serious crime. I
15 just don't even know what this man's role in
16 anything was, other than this one statement that we
17 have.

18 And so what we're requesting is
19 information about why he was recommended for parole
20 early by the government, why that parole was so
21 quickly revoked, and any other statements that he's
22 made about his role.

23 Because, again, it's not just a needle
24 in a haystack here. Our client is being charged
25 with running this, being in charge of this area and

1 this distribution at this time.

2 So if Mr. Lopez has made statements
3 about his role in that and never mentioned our
4 client, that is a glaring void that is -- a lack of
5 information can be *Brady*, especially if, all of a
6 sudden, they add information that has never been
7 there before.

8 MR. ALANIZ: I provided statements
9 that Mr. Benicio Lopez has provided the
10 government -- that's given the government, Your
11 Honor. His state cases have nothing to do, as far
12 as I know, with this case.

13 We filed -- we sent a letter to the
14 parole board. Because he's only charged in state
15 court. He was charged in federal court on a gun
16 case. But by the way that he came up for parole, he
17 had already discharged his federal sentence.

18 So we couldn't help him out with his
19 federal sentence. So one way that we helped him
20 out -- we had given this notice to defense
21 counsel -- is that we wrote a letter to the parole
22 board telling them that he's cooperated in this case
23 and to consider parole.

24 The defense counsel is correct. He
25 was paroled at some point. And then two days later,

1 he gets notified by parole that they made a mistake.
2 And he turns himself back in to Starr County Jail,
3 and he's in custody today.

4 THE COURT: To the extent that you
5 have any other reports you haven't given them and to
6 the extent you have a written letter to the parole
7 board, I want you to provide that.

8 MR. ALANIZ: We can do that, Judge.
9 Not a problem.

10 MS. COGLIANO: Number 6 is similar
11 again. This one is definitely more specific,
12 though. They have provided a lot of statements by
13 Mr. Romo, even ones that don't include our client.

14 The only thing I'm asking for is from
15 his confidential informant file. When he starts
16 implicating our client, he says: Oh, Yeah. When I
17 was working as a confidential informant, I told
18 y'all I was going to the dentist. And, really, I
19 did a big drug deal with Lee Roy in Houston.

20 I want that report because we're
21 trying to prove that our client wasn't somewhere,
22 wasn't doing something. And, theoretically, the FBI
23 and the DEA's policy is to write down every
24 communication they have with their confidential
25 informants. And we would like to know when that was

1 so that we can fight it.

2 THE COURT: So what is it you're
3 asking for?

4 MS. COGLIANO: The CHS file. It's a
5 little different than normal reports. It's more
6 detailed. I think the government knows what I'm
7 talking about.

8 MR. ALANIZ: We'll get that. We'll
9 make arrangements to get that file and turn it over
10 to defense counsel. That's not a problem.

11 Not the file, but the statements that
12 he made during the course of his cooperation. We'll
13 give them those statements from the file.

14 THE COURT: File No. 7.

15 MS. COGLIANO: Those are reports that
16 we were discussing during exhibits. That is the
17 first report and one interim report. These are
18 reports that are submitted by the task force, the
19 Joint Task Force, to the government, asking for them
20 to continue funding the Joint Task Force and keeping
21 it open and giving their progress on it.

22 Again, part of our theory in this case
23 is figuring how this investigation took a turn that
24 it did. It does, quite suddenly. And we're trying
25 to figure out why. So we're trying to see when it

1 changes.

2 Some of the statements that are in
3 these reports contradict each other. Some say that,
4 you know, when he's arrested, the Gulf Cartel will
5 be finished completely. Other ones say that, you
6 know, they've already -- what's the word --
7 disrupted the Gulf Cartel. It shows which agencies
8 were involved at which point in time.

9 We think it also goes to the
10 credibility of the agents, because they're signing
11 off on these reports that are saying that our client
12 is the highest-ranking member of the Gulf Cartel and
13 that his arrest will end this transnational criminal
14 organization. I think, we can't impeach or
15 cross-examine the officers and agents about that
16 without knowing all of the things that they said
17 like that.

18 MR. ALANIZ: Again, Your Honor, I
19 think that we'll reiterate our objection. Those
20 reports are work product that we prepare
21 for purposes --

22 THE COURT: Describe the report.

23 MR. ALANIZ: The report -- Judge,
24 every interim report says what has happened since
25 the last time the report --

1 THE COURT: Start at the beginning.
2 Who is it from and who is it to?

3 MR. ALANIZ: It's from our agents
4 from -- the agency prepares it, we review it, we
5 sign off on it, and it goes to DC.

6 But what it shows, basically, is any
7 new targets, any new defendants, any cases where the
8 people have been indicted, any sentencings that have
9 occurred, the sentence that they got, any seizures
10 that occurred. Just give a progress report of the
11 investigation.

12 It doesn't talk about, Oh, by the way,
13 we spoke to this defendant or that defendant and
14 this is what they said. Those are reports that are
15 done separately. This is just, again, an update to
16 the OCDETF Commission.

17 THE COURT: I want you to provide
18 those to me in-camera and let me look at them.

19 MR. ALANIZ: Of course.

20 THE COURT: All right. Denicio
21 Gutierrez?

22 MS. COGLIANO: This is another one
23 where we're asking for the full file or to be able
24 to talk to the agent.

25 In this allegation, there is one

1 witness named Denicio Gutierrez. And he says he's
2 working with somebody that works with our client or
3 near our client; and that that person told him that
4 Lee Roy wanted Denicio to distribute drugs for Juan,
5 that third party, and Lee Roy. Juan has never been
6 interviewed, arrested, detained, even approached or
7 contacted by law enforcement until, I think,
8 yesterday.

9 And so, we believe that the case file
10 will show why that part of Denicio's statement
11 wasn't validated, what was corroborated in order to
12 get Mr. Gutierrez indicted this year, what was not
13 corroborated. Our client was on bond at the time of
14 that, and he wasn't questioned by pretrial. He
15 wasn't talked to by any of the case agents. He was
16 left on bond to, theoretically, continue doing what
17 Denicio is accusing him of doing, even though he's
18 being monitored by law enforcement at the time.

19 And so there is a big gap, here, about
20 what happened in this case. And we cannot
21 cross-examine Denicio about that or develop why he
22 would be lying about that or the fact that he's
23 lying about that, without knowing all of those
24 facts.

25 MR. ALANIZ: Can I make a couple of

1 corrections? First of all, Mr. Gutierrez was
2 arrested in Chicago with 30 or 40 kilos of cocaine.
3 He was not arrested at that time. He was given a
4 chance to work as a CS before he gets arrested.

5 He debriefed. And we've given -- any
6 reports where he's talked to law enforcement on that
7 case and in our case, we provided to defense counsel
8 already.

9 The issue of whether -- why this
10 defendant was not revoked on bond is because
11 Mr. Gutierrez gave a statement that on that
12 40-kilogram deal that he got arrested -- got stopped
13 and seized in Chicago, this defendant was not
14 involved. Had he been involved, if we had evidence
15 of that, we would have gone to the Court and filed a
16 motion to revoke his bond. That's not what he said.
17 Subsequent to that, he debriefed with us and told us
18 about other transactions that he was involved in
19 with this defendant.

20 But we can -- that's not a problem.
21 This is a recent case. We can provide the case file
22 to defense counsel if they need it.

23 THE COURT: Provide the file to them.

24 MR. ALANIZ: Sure.

25 THE COURT: Do we have a bunch of

1 witnesses testifying from McAllen?

2 MS. COGLIANO: Yes. What I've learned
3 is that it's an unusual policy or practice in
4 McAllen that the factual basis is not included in
5 the plea agreement paperwork, nor is it filed as a
6 separate document. It's simply read into the record
7 and agreed to by the defendant at the time of their
8 plea.

9 And so, Judge, we would ask that the
10 government provide that factual basis that was read
11 into the record, because we --

12 THE COURT: Do you have those?

13 MR. ALANIZ: What I did back in
14 McAllen is I would write up a piece of paper.
15 Whether it stays in the file or throw it away after
16 I read it, I don't remember. But, obviously, it's
17 read into the record.

18 The problem, even if I have that
19 document that I myself wrote up, that might not be
20 what I read into the record. The clearest thing
21 would be the record itself, which is transcribed by
22 the court reporter.

23 And, again, our objection would be if
24 they're going to try to use that factual basis for
25 the purposes of cross-examining the witnesses about

1 why Mr. Villarreal's name is not in that factual
2 basis, then we'll have to figure how to explain
3 that, because it's not their statement.

4 MR. MORRIS: We'll cross that bridge
5 when we come to it, but there's at least a factual
6 basis or --

7 THE COURT: How many McAllen witnesses
8 do we have?

9 MR. ALANIZ: Five or six.

10 THE COURT: To the extent the
11 government has them, I'll order you to produce them.

12 MR. ALANIZ: I'll look for them.

13 THE COURT: Again, I understand the
14 difference between actually what is written and what
15 you said, if you read it into the record.

16 I took a guilty plea here today, and
17 AUSA skipped about half the factual summary. She
18 just hit the things that established the elements of
19 the crime. You know, there was nothing wrong with
20 that. That is what it's there for.

21 All right. And then we have
22 statements or interviews by defendant Villarreal
23 since 2013?

24 MS. COGLIANO: To be honest, this one
25 is really for me about preserving some issues here.

1 What we've been told, for the extent of this case,
2 is that there are no statements by our client
3 subsequent to his being discharged as a confidential
4 human source in 2013.

5 We did find his phone that he was
6 using to talk to agents, all the way up through
7 2015. Since then, last week, we received one
8 additional report of a statement that he made to law
9 enforcement in 2014. In my experience, it would
10 just be unusual that he would have no contact and
11 then have one specific report about one person and
12 then no contact again.

13 I don't think that the government has
14 possession of it right now and is hiding it from us.
15 But I would like for that to be looked for, because
16 this is a really important thing; our client
17 actually talking to law enforcement.

18 THE COURT: If you've got a statement
19 from Mr. Villarreal that hasn't been produced, I'm
20 ordering you to produce it.

21 MR. ALANIZ: We will. Just to let the
22 Court know, basically, these reports we found out
23 from our case agent who is no longer in McAllen. He
24 is in Indianapolis, Indiana.

25 And also, these statements that we

1 turned over to defense counsel have nothing to do
2 with this case. It's totally a separate matter.
3 We'll turn them over anyway.

4 THE COURT: I don't care whether it
5 has to do with this case or not. If it's Mr.
6 Villarreal's statement, I want it turned over.

7 MR. ALANIZ: Sure.

8 MS. COGLIANO: That's all I've got,
9 Judge.

10 THE COURT: I'm going to switch gears
11 to the motions in limine. I've got the government's
12 in front of me.

13 The first one is: Any question,
14 comment, argument, or testimony, concerning the
15 punishment or range of the punishment. I'm granting
16 that.

17 The second one is: Any question,
18 comment, argument, concerning any collateral
19 consequences of prosecution. I'm granting that.

20 The third one is: Any question,
21 comment, argument, testimony, concerning the fact
22 that the defendant has no prior convictions.

23 Let's talk about that one.
24 Mr. Alaniz?

25 MS. MACDONALD: Judge, I remember the

1 Court addressed this last time. Ordinarily, the
2 lack of a criminal history is not relevant and it's
3 impermissible. 404(b).

4 I know the Court mentioned, Should the
5 404(b) come in? The Court was inclined to let that
6 in. And we're fine with however the Court wants to
7 rule.

8 THE COURT: Well, I'm denying this
9 one. I've got a feeling we're going to hear that he
10 has no conviction more than once.

11 MR. MORRIS: May I have a
12 clarification on range of punishment and collateral
13 consequences? That would be the range of punishment
14 for Mr. Villarreal, not of witnesses.

15 THE COURT: No, just Mr. Villarreal.

16 MR. MORRIS: Thank you.

17 THE COURT: The fourth one was: Any
18 question, comment, argument, or testimony,
19 concerning the government's decision not to call
20 witnesses. I'm granting that.

21 Any question, comment, argument, or
22 testimony, concerning the charging decisions. I'm
23 granting that.

24 And any question, comment, argument,
25 testimony, encouraging the jury to base their

1 verdict on bias or sympathy. I'm granting that.

2 I have the defendant's motion in
3 limine. Any question, comment, argument, testimony,
4 concerning allegations of money laundering.

5 MS. MACDONALD: We are unclear as to
6 what defense wants to limit. Although the defendant
7 is not charged with money laundering, part of the
8 ongoing drug conspiracy in this case involves the
9 transportation of the drug proceeds.

10 So there are going to be many
11 witnesses who will talk about how they delivered
12 bulk cash drug proceeds to the defendant and how
13 those would get back to Mexico. So, we object to
14 the extent that they're trying to limit the mention
15 of drug proceeds or money.

16 Also, we do intend to get into
17 lavish-lifestyle issues, which will involve high-end
18 expenditures by the defendant. We think that is
19 relevant as indirect evidence of membership into a
20 cartel and having lots of access to drug proceeds.

21 THE COURT: Spoken truly by someone
22 who has never spent much time in Starr County.

23 MR. MORRIS: I think part of what our
24 concern is here, we understand that, initially,
25 there was a money-laundering investigation. And the

1 government hired an expert to review financial
2 transactions. And our understanding is: The expert
3 concluded that he or she could not tell whether or
4 not there were improper money-laundering-type
5 transactions.

6 So we think that since the government
7 can't prove it, they shouldn't be able to imply it.

8 THE COURT: I'm going to allow them --
9 to the extent it's relevant and otherwise
10 unobjectionable, allow their witnesses to testify
11 they delivered sums of money to the defendant or
12 personally witnessed the defendant with drug
13 proceeds, if, indeed, there is testimony to that
14 effect.

15 But, I guess -- by denying that
16 motion, I'm not giving you leeway to open the door
17 to something that he's not charged with,
18 necessarily, outside of the conspiracy charge that
19 has been made.

20 The second one is: Any question,
21 comment, argument, or testimony, concerning the
22 money found in the purse of the defendant's wife
23 upon his arrest. I don't know anything about that.

24 MS. MACDONALD: Defendant was
25 arrested --

1 THE COURT: All of my money is always
2 in my wife's purse.

3 MS. MACDONALD: When the defendant was
4 arrested, he was in California coming out of a club
5 at 2:00 a.m., driving a brand-new Porsche. He had a
6 Rolex, some jewelry, and his wife had a stack of
7 hundred-dollar bills in her purse.

8 The conspiracy includes up until the
9 date of his arrest. Again, it's our theory that
10 this bulk cash that the wife has is drug proceeds.
11 So, to us, it's just a fact in the record, a fact of
12 the case.

13 THE COURT: I'm going to overrule it.

14 MR. MORRIS: May I be heard?

15 THE COURT: You may be heard.

16 MR. MORRIS: She gave an explanation
17 for the source of the cash at the time, and the
18 California authorities gave it back to her. So,
19 again, we're sort of the same deal, as we can -- she
20 had \$10,000, let's all raise eyebrows. But that's
21 as far as it goes.

22 THE COURT: And I expect that. So you
23 have carte blanche.

24 The next is leading questions. And,
25 obviously, that is always an issue. I'm going to

1 overrule that to the extent that if you think
2 something is leading, I want you to object to it.
3 The same thing with hearsay.

4 Having said that, I don't consider the
5 fact that, you know, any of these witnesses
6 participated in activities together, or however you
7 want to argue this. They're not vehicles to run in
8 a bunch of hearsay against people. You know, I'm
9 not going to let that happen.

10 I do expect both sides to object to
11 that question. But I'm telling you right now that
12 I'm not going to put up with that. I know, every
13 once in a while, something happens that you don't
14 plan on. But I expect all of y'all to tell both
15 sides, their witnesses, this isn't -- you know, you
16 don't have permission to just get up here and spout
17 off whatever comes into your head or whatever you
18 thought you were told by somebody.

19 MR. MORRIS: With respect to the
20 leading, if I could elaborate a little bit. We've
21 actually obtained transcripts of other trials
22 that -- where cooperating witnesses were
23 cross-examined or direct examined by Mr. Alaniz.
24 And it disturbed us that the tenor of the testimony
25 was a lot of Mr. Alaniz telling the witness

1 something and then asking if that was true.

2 And we expect, in this case -- and
3 we've seen through the statements that we've seen
4 from the witnesses that, as time goes on, their
5 statements change and they become more favorable to
6 the government.

7 And there is going to be a lot of
8 cross-examination about what you said then as
9 opposed to what you said now, and what went in --
10 what happened in the interim.

11 But there are still going to be
12 discrepancies. We don't want those discrepancies to
13 be corrected through leading questions.

14 THE COURT: Okay. To that extent,
15 I'll tell you right now: If you object, I'll grant
16 it.

17 MR. MORRIS: Okay.

18 THE COURT: My attitude on leading
19 questions is they have their time and place. I know
20 what the general rule is. It's your witness, you
21 can't lead them.

22 But sometimes you have to orient a
23 witness through a certain fact situation. But once
24 you're getting oriented and once we're talking about
25 what is at issue here, I'm not letting you lead the

1 witness and I'm not letting you drag in a bunch of
2 hearsay unless there is a real good exception for
3 it.

4 MR. ALANIZ: As far as hearsay,
5 obviously, as the Court is well aware,
6 co-conspirators' statements made during the course
7 of the conspiracy. We have a lot of those that
8 we'll be introducing regarding the kidnapping and
9 the drug trafficking.

10 But I think those are limited only to
11 when the actual testimony would be. It was made by
12 a co-conspirator, and it was in furtherance of the
13 conspiracy as required by Fifth Circuit case law and
14 the rules.

15 THE COURT: I mean, that all depends
16 on what the statement is to me.

17 MR. ALANIZ: Right. Exactly. I just
18 wanted to make the Court aware that we do plan to
19 ask co-conspirators, who were involved in these
20 crimes, what this defendant or other defendants
21 might have said during the course of the conspiracy.
22 Because I believe that those are proper and
23 admissible under the rules.

24 THE COURT: No, I know the test for
25 it.

1 MR. ALANIZ: Yes, sir.

2 THE COURT: I was trying to --

3 MR. ALANIZ: We'll make sure that we
4 talk to our witnesses and keep their testimony to
5 only things that are appropriate and are admissible
6 under the rules.

7 THE COURT: Okay.

8 Let me talk a little bit about voir
9 dire. Since the time we last talked, Judge Lake
10 picked a criminal trial. And so, I have visited
11 with Judge Lake about how he did it downstairs.
12 It's going to be more awkward than we would like it
13 to be. But we'll just have to live with it.

14 Have all y'all been vaccinated?

15 MR. MORRIS: How long have we been --

16 THE COURT: Mr. Villarreal, have you
17 been vaccinated?

18 THE DEFENDANT: (Shakes his head.)

19 THE COURT: Here is what I would like.
20 I would like Mr. Villarreal to sit on that side of
21 the table, between you or next to you, however you
22 want to do it.

23 MR. MORRIS: Certainly.

24 THE COURT: And I'm just doing that
25 out of -- we've had a rule that -- and even Rhonda,

1 I'm throwing you under the bus here, was not
2 vaccinated. And because she has proximity to the
3 jury -- and the theory being that jurors don't have
4 a choice about being jurors, they're drafted. And
5 because of that, anybody that is close to the jury
6 has to be vaccinated.

7 Having said that, if it wasn't a
8 criminal trial, I would, Mr. Villarreal, order you
9 to wear a mask. But I'm not going to do that unless
10 you want to, just because of the way it might look.
11 If everybody at your table is not wearing a mask and
12 you are, it might look weird. I don't want the jury
13 to assume anything from that.

14 We will not ask the jurors if they're
15 vaccinated. Although, it's more than likely they'll
16 ask us, if Judge Lake's experience was any roadmap.

17 What I'm going to have you do is meet
18 me up here, Friday, at 8:30, just to go over any
19 kind of final details we may have. And, hopefully,
20 at some point there, Rhonda will also have the jury
21 list for you. So you can look at the jury list.

22 Then we'll all go downstairs to the
23 first floor in the jury assembly room. If you want
24 to look at it -- I know you guys have seen it. If
25 you want to look at it, I'll have Rhonda walk you

1 down there and let you see it. It's just a big
2 room. It's where they normally assemble the juries
3 to come up here.

4 The jury assembly room has two small
5 back rooms in the back of it. When we question the
6 jurors individually, the ones we think need to be
7 questioned, we're all going to have to kind of get
8 in that back room. So it may just be one person
9 from each side, the court reporter, Rhonda, and me.
10 And Sharla will be our bailiff to say: Go get Juror
11 No. X. We want to talk to them. And Sharla will
12 make sure they come in. Because it's a pretty small
13 space.

14 Then after we're done questioning,
15 that will also be -- we'll pick one of those rooms.
16 That will also be the place we'll do strikes for
17 cause. Because, obviously, I don't want the jurors
18 to hear y'all make strikes for cause.

19 And then after that, what I'll do is
20 probably give you, like, 20 minutes. And one of
21 y'all will stay in one room and the other one will
22 go to the other room and make your peremptory
23 strikes. And then Rhonda will get them, and I'll
24 look at them probably up here out of their presence.

25 This is a long, drawn-out way of

1 telling you that those people are still going to be
2 in that jury assembly room that entire time. And
3 we're going to allow them to go to the restroom or
4 go get a drink or whatever. But they'll be milling
5 around there.

6 So the privacy you'll have is in those
7 rooms. Whereas, in a normal situation: They'd be
8 here in the courtroom. We would kick them out. I
9 would give one of you-all a jury room and the other
10 side would stay in here. And you would have a lot
11 more privacy and a lot more room, quite frankly.
12 But that's -- for COVID reasons, we're not doing
13 that.

14 I think we're going to have to pick 14
15 jurors. I will spread them out as much as I can.
16 I'll allow any juror that has been vaccinated to go
17 maskless, if they want to; or if they want to wear a
18 mask, they can wear a mask. We'll probably end up
19 having to seat some jurors on the front pew there.
20 They will be kind of wrapped around that way, just
21 for social distancing purposes.

22 MR. MORRIS: Where are we going to
23 question from?

24 THE COURT: I think we'll use the
25 podium. We didn't use the actual podium this

1 morning, but we used these microphones right here at
2 the bench. It seemed so much easier. And the court
3 reporter is nodding her head. She can hear you.

4 And so, we may try to angle it a
5 little bit so that your back is not to whoever the
6 jurors are.

7 MR. MORRIS: That was my concern.

8 THE COURT: No, I'm worried about that
9 too. And Rhonda and I are probably going to come in
10 here tomorrow and see exactly where we would have to
11 put people to keep them, somewhat, socially
12 distanced in this age of COVID.

13 MR. MORRIS: What about the witnesses
14 that aren't vaccinated?

15 THE COURT: Well, the witnesses -- I
16 mean, they'll testify. We've got these little
17 coverings like you see in front of you, and you put
18 on the microphone. We'll just change those out
19 between witnesses. I don't think there is anything
20 we can do about the witnesses. We're just going to
21 have to live with it.

22 MR. MORRIS: I was thinking about
23 proximity.

24 THE COURT: I'm hoping the first four
25 or five jurors are vaccinated.

1 Now, Judge Lake, in his trial, it was
2 a criminal trial. He had 14 jurors, and they were
3 all vaccinated. But that's, as you know, luck of
4 the draw.

5 I'm trying to think -- once we do that
6 and get the jury picked, I think I may bring them
7 back up here and give them their preliminary
8 instructions from me and then send them home. So,
9 y'all would be doing your opening statements Monday
10 morning.

11 But that way, they know: Don't talk
12 about it. Don't look on the internet. All that
13 stuff will be out of the way. Plus, it's one less
14 thing we have to do on Monday morning.

15 All right. Anything else we can get
16 resolved?

17 MS. MACDONALD: We wanted to bring up
18 the defendant's witnesses. There has been two
19 witness lists filed by the defense. It's not clear
20 if all witnesses are character witnesses or not.

21 Two witnesses were attorneys who
22 represented the defendant in this case, who now --
23 who were removed by the Court for having conflicts;
24 Daniel Garcia and Marty Vela. And they remain on
25 the defense witness list. We have concerns that

1 they might get into problematic testimony, unless
2 they're just being offered as character witnesses.

3 MS. COGLIANO: Danny Garcia is
4 definitely not testifying. I don't expect that
5 Marty will testify. And if she does, it's solely
6 about that trip to Cancun that she was there for.
7 But I think that we have other witnesses to cover
8 that.

9 I can also send you -- Ms. MacDonald,
10 will send you who is a character witness and who is
11 a fact witness.

12 THE COURT: Good.

13 MS. COGLIANO: There are some
14 character witnesses on the original one that we are
15 not calling, and I will clarify that for you.

16 MS. MACDONALD: Great. Thank you.

17 There is another witness, Demis De
18 Leon. He's a defendant that Mr. Alaniz and I are
19 prosecuting in a case before Judge Ellison. He's
20 pending sentencing. He's currently at FDC. He's
21 represented by Clay Conrad, who used to represent
22 the defendant in this case.

23 Again, same concerns about overlapping
24 counsel. We don't know for what reason Mr. De Leon
25 is being called. He's pending sentencing. He's not

1 cooperating with us. There are bias issues.

2 THE COURT: Is he a character witness
3 or a fact witness?

4 MS. COGLIANO: He is a fact witness.
5 We've gotten him conflict counsel that is different
6 from Clay, to advise him specifically on this issue.

7 THE COURT: Okay. Good.

8 MS. MACDONALD: Lastly, we filed a
9 motion for reciprocal discovery years ago when Judge
10 Harmon had this case. It was granted. We just ask
11 that defense produce any statements of their
12 witnesses who are not testifying as a character
13 witness and turn them over to us.

14 THE COURT: Will you do that, please?

15 MR. MORRIS: We will do that.

16 THE COURT: Okay. Anything else?

17 All right. If not, we'll see you
18 bright and early Friday morning. And thank y'all
19 for being here.

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21 (Court in recess.)

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C E R T I F I C A T E

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I hereby certify that pursuant to Title 28,
Section 753 United States Code, the foregoing is a
true and correct transcript of the stenographically
reported proceedings in the above matter.

Certified on June 9, 2022.

/s/ Nichole Forrest
Nichole Forrest, RDR, CRR, CRC

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